Planning Inspectorate

Appeal Decision

Site visit made on 10 September 2024

by R Cahalane BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th December 2024

Appeal Ref: APP/M3835/W/24/3344688
29 Church Walk, Selden, Worthing, West Sussex BN11 2LT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Jonathan Forrest against the decision of Worthing Borough Council.
- The application Ref is AWDM/1451/23.
- The development proposed was originally described as: "Planning permission already granted for a double garage and would like to make a part change of use, to maintain it as a garage/storage and add the option to inhabit it on occasion. Therefore creating warm sleeping area, kitchen/washroom and washing facilities. This will be used for the benefit of the tenants, in 29 Church Walk as an over flow for guests and for me as the landlord, to have the ability to stay there."

Decision

1. The appeal is dismissed.

Background and Main Issues

2. The description of development within the decision notice differs to that within the application form and which is also in the banner heading above. The application form also advises that work on the building subject of this appeal ("the appeal building") begun in August 2023. I was able to see and access the appeal building during my site visit. Apart from the inclusion of the word "retention", which is not a form of development, the decision notice description is otherwise accurate, and I have determined the appeal on this basis. For clarity, the description of development I am considering is: "detached pitched roof building to rear, to be used as a garage/store plus occasional use as habitable accommodation."

3. The Local Planning Authority (LPA) originally granted planning permission within the appeal site for the demolition of a garage and erection of a new garage[1] ("the approved garage"). I have been provided with its decision notice and approved plans and note that its Condition 5 restricts the approved garage use to "solely for purposes incidental to the occupation and enjoyment of the dwellings at 29 Church Walk and shall not be used as habitable living accommodation nor for commercial business purposes".

4. Following my site visit, I also noted that the rooflights as constructed do not accord with those shown on the approved garage plans and as also shown on the plans submitted for consideration of this appeal. I consider this matter further below in the second Main Issue.

[1] LPA Ref: AWDM/1911/22

5. The decision notice cites one reason for refusal. However, it refers to the scale and nature of the habitable accommodation proposed, the amenities of both neighbouring occupiers and future occupiers of the appeal building, and that the LPA is not satisfied that the proposed accommodation would be ancillary to the use of No.29 Church Walk.

6. The revised National Planning Policy Framework (the Framework) was published in December 2024. There is no need to invite further comments on the revisions from the LPA or the appellant, as they do not affect policies pertinent to this appeal.

7. In light of all the above, I have identified four Main Issues for consideration in this appeal:

   - whether the appeal building is designed as ancillary to the ground floor flat of 29 Church Walk;
   - the effect of the appeal building on the living conditions of neighbouring occupiers, with particular regard to privacy, noise and disturbance and external garden space;
   - whether the appeal building would provide adequate living conditions for future occupiers, with particular regard to internal living space and external garden space; and,
   - the effect of the appeal building on the character and appearance of the surrounding area.

Reasons

Whether the appeal building is designed as ancillary

8. The appeal site comprises a two-storey semi-detached building converted to two flats, and a detached building including a garage and store which forms the appeal building. The site forms a corner plot at the junction of Church Walk and Gannon Road within a predominantly residential area of Worthing, with the garage/store doors facing Gannon Road where its vehicular access is from. There is a hardstanding area along and beyond the appeal building's frontage.

9. The existing internal layout of the appeal building is as indicated on the proposed floor plans, and includes a kitchen and a shower room at ground floor level, with an internal staircase up to first floor accommodation within the roof space. At the time of my site visit, the kitchen contained facilities including cooking hobs, oven and microwave, although the appeal building appeared unoccupied as living accommodation. Access to the facilities is via a side door facing the rear elevation of No 29, with an open patio area in between.

10. The approved garage does not contain a first floor or any kitchen or bathroom facilities. The LPA contends that their identified differences from the approved garage plans make the appeal building fundamentally different from the approved garage, such that it would not constitute implementation of the approved garage. This is however not a matter that I can determine under this Section 78 appeal.

11. The LPA raises concerns regarding potential use of the appeal building as a dwelling independent of No 29 which, in part, stems from the way the initial planning application was made. The appeal submission makes clear that the

appeal building is now sought to be retained as an ancillary use to the ground floor flat of No 29, to provide a garage, store and overflow/guest accommodation ancillary to the ground floor flat in no. 29, for example by visiting guests. I am satisfied that this falls within the description of development being considered.

12. Case law[2] has held that the provision of facilities for independent day-to-day living, such as those currently within the outbuilding, does not necessarily create a separate planning unit from the main dwelling. Instead, this is a matter of fact and degree, which I consider below.

13. The appeal building has a noticeably smaller footprint than the ground floor flat of No 29. Its habitable floorspace is also restricted due to retention of a garage space and the first-floor sloping ceiling height. I also note that the existing patio between the appeal building and the No 29 ground floor flat is open plan and could be easily used by occupiers of both buildings, as No 29 also contains an access door direct to this patio. Similarly, the internal garage space and external hardstanding could be shared for the parking of vehicles. The buildings are sited relatively close to each other, and any physical subdivision between them, for example fencing, could have been controlled by means of a suitably worded planning condition, had I been minded to allow the appeal.

14. I am therefore satisfied that the appeal building is designed as ancillary to the ground floor flat of No 29, given its scale, layout and function. The development complies with Policy DM5 b) of the Worthing Local Plan 2023 (WLP) in this regard. This policy also requires residential annexes to be capable of satisfactory conversion for use in association with the main dwelling when it is no longer required by a relative or dependant. The appeal building's use would however not create a new planning unit, so I do not consider this element of the policy to be relevant to this Main Issue.

15. Had I been minded to allow the appeal, a suitably worded planning condition could have been imposed to ensure that the appeal building use remains ancillary to the ground floor flat of No 29. I see no reason why such a condition would not have been enforceable. Any use of the appeal building as an independent dwelling would require additional planning permission.

Living conditions – neighbouring occupiers

16. As I have found the appeal building to be capable of being ancillary to the ground floor flat of No 29, I shall assess this Main Issue in this context.

17. Four first floor rooflights would serve the main living space for the appeal building. The rooflights as constructed do not accord with those shown on the approved garage plans, or those shown on the plans submitted for consideration in this appeal. The rooflights as installed all have a more vertical emphasis. Whilst I must determine the appeal on the basis of the submitted plans, I am also mindful of the appellant's statement of case which states that the permission sought is to retain the garage as constructed.

18. The two rooflights facing Gannon Road are sufficiently away from neighbours beyond the road. However, the rooflights on the other roof slope both allow for clear views at close proximity to the adjoining rear garden of No 31 Church Walk, and the rear garden of No 33 Church Walk immediately beyond No 31.

[2] *Uttlesford DC v SSE & White* [1992] JPL 171

This allows for intrusive views across both these neighbouring gardens, and angular views across and close to their rear windows. This would lead to a significant and unacceptable loss of privacy to Nos 31 and 33 Church Walk, even when accounting for a potentially less frequent pattern of ancillary occupation. Even if the higher rooflights as indicated on the submitted plans were to be installed, including by means of planning condition, they would still allow for unacceptably intrusive views upon Nos 31 and 33 Church Walk.

19. In this regard, the appeal building therefore conflicts with Policy DM5 a) viii) of the WLP which requires development to not have an unacceptable impact on the occupiers of adjacent properties in terms of loss of privacy.

20. The first-floor side elevation windows of No 2 Gannon Road sited beyond the appeal building are obscure-glazed. Angular views towards this neighbour's rear garden are also sufficiently obstructed by its pitched roof garage.

21. Given the nature of the proposed accommodation as ancillary to the ground floor flat of No 29, there would be no unacceptable impacts in terms of overlooking or noise and disturbance.

Living conditions – future occupiers of the development

22. As I have found the appeal building to be capable of being ancillary to the ground floor flat of No 29, I shall also assess this Main Issue in this context. The Nationally Described Space Standards are underpinned by WLP Policy DM2, but only for new dwelling proposals. Policy DM5 refers to occupiers of adjacent properties, but is silent in respect of living conditions of future occupiers. As such, these policies are not relevant to this Main Issue.

23. Paragraph 135 f) of the 2024 Framework seeks a high standard of amenity for future users. The appeal building, as ancillary accommodation for the ground floor flat of No 29, would provide a layout and amount of internal living space that would be suitable for its intended use as overflow or guest accommodation for this flat. Such future occupiers would therefore be provided with adequate internal living space. The nature of this ancillary use would not necessitate the provision of a private garden for its future occupiers.

24. The appeal building would therefore provide adequate living conditions for future occupiers.

Character and appearance

25. The officer report indicates that the size of the appeal building remains largely as previously approved for the garage. It appears to me that the approved garage, the current building on site and the current proposed plans are of very similar size.

26. No physical subdivision of the appeal site is proposed. There would therefore be no discernible visual impact upon the prevailing pattern of development in the surrounding area. The appeal building also does not represent an overdevelopment of the site, as its scale and siting is not noticeably different to that of the approved garage. The material external differences from the garage approval appear to be limited to the alteration of the rooflight sizes, which do not lead to any visual harm when compared to the approved garage.

27. The appeal building therefore complies with the design requirements of Policies DM2 and DM5 of the WLP which require, amongst other things, development to

achieve high quality design that respects and enhances the character of the site and the prevailing character of the area.

Other Matters

28. The officer report states that no supporting information has been provided to demonstrate how the proposal would meet the requirements of WLP Policies DM16 and DM17, which include energy efficiency and CO2 reduction/renewable energy requirements that would apply to a new dwelling proposal. However, I have found that the appeal building would not create a new dwelling and based on my reading of these policy requirements, they do not apply to ancillary accommodation.

29. The officer report also states that WLP Policy DM18 requires the protection, conservation and enhancement of biodiversity, but no details have been provided in this respect. The LPA's submitted evidence does not amplify what specific details are required in this regard. The Council's Private Sector Housing Team also raised objection in consultation, stating that action would be deemed necessary under separate legislation. It is unclear as to whether this would apply to ancillary accommodation. As I am dismissing the appeal for another reason, I need not consider these matters any further.

Conclusion

30. The appeal building complies with Policies DM2 and DM5 of the WLP in terms of its ancillary design and impact on the character and appearance of the area. I have however found significant conflict with Policy DM5 a) viii) in terms of unacceptable loss of privacy to the occupiers of No 31 and 33 Church Walk. Paragraph 135 (f) of the 2024 Framework seeks a high standard of amenity for existing and future users. I therefore conclude that the proposal is contrary to the development plan as a whole. The material considerations before me do not indicate that a decision should be made other than in accordance with the development plan.

31. I therefore conclude that the appeal should be dismissed.

R Cahalane

INSPECTOR